

ARKANSAS SUPREME COURT

No. CR 06-1236

NOT DESIGNATED FOR PUBLICATION

MICHAEL LOVE
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered

January 4, 2007

PRO SE MOTION FOR BELATED
APPEAL [PULASKI COUNTY
CIRCUIT COURT, CR 2004-4921, HON.
BARRY ALAN SIMS, JUDGE]

MOTION GRANTED.

PER CURIAM

A judgment and commitment order entered in Pulaski County Circuit Court on July 11, 2005, reflects that petitioner Michael Love pled guilty directly to the court on charges of first-degree battery, felon in possession of firearms, and statutory enhancement of the battery count as committed in the presence of a child, and was sentenced as an habitual criminal to an aggregate sentence of 300 months' imprisonment in the Arkansas Department of Correction. Petitioner timely filed a petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by order entered February 3, 2006. Petitioner first filed notice of appeal on September 1, 2006. He lodged a partial record in this court and now brings this motion for belated appeal. Subsequently, a transcript that appears to be the complete record was submitted, as well.

A petitioner has the right to appeal a ruling on a petition for postconviction relief. *See Scott v. State*, 281 Ark. 436, 664 S.W.2d 475 (1984) (*per curiam*). However, along with that right, goes the responsibility to timely file a notice of appeal within thirty days of the date the order was entered

in accordance with Ark. R. App. P.–Civ. 4 (a). If the petitioner fails to timely file a notice of appeal, a belated appeal will not be allowed absent a showing by the petitioner of good cause for the failure to comply with proper procedure. *Garner v. State*, 293 Ark. 309, 737 S.W.2d 637 (1987) (*per curiam*).

Petitioner asserts good cause in that he claims that he did not receive notice of the order denying his petition until August 18, 2006. Criminal Procedure Rule 37.3 (d) places the burden on the circuit clerk to promptly forward a copy of the order disposing of a petition under the rule to the petitioner. The failure of the clerk to act in accordance with the Rule 37.3(d) has been held to be cause to grant a motion for belated appeal. *Chiasson v. State*, 304 Ark. 110, 798 S.W.2d 927 (1990) (*per curiam*); *Porter v. State*, 287 Ark. 359, 698 S.W.2d 801 (1985) (*per curiam*).

Here, the State has not entered a response contesting petitioner's claim that he did not receive prompt notice of the order. Moreover, in response to a motion by petitioner requesting leave to file a belated notice of appeal and proceed *in forma pauperis*, the trial court entered an order stating that, according to court records, petitioner did not receive a copy of the order dismissing his petition. As it appears that the circuit clerk did not act in accordance with Rule 37.3(d), we grant petitioner's motion. Because the complete record has been submitted, we direct our clerk to lodge the record and set a briefing schedule.

Motion granted.